

WILDLIFE TRAFFICKING IN INDIA: NEED FOR EFFECTIVE IMPLEMENTATION OF WILDLIFE LAWS

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INTRODUCTION

“Only when the last of the animal’s horns, tusks, skin and bones have been sold, will the mankind realize that money can never buy back our Wildlife”

India has diverse flora and fauna due to the climatic and geographical conditions of the land. Wildlife forms an integral part of India’s rich heritage. All forms of animals as small as ants to as Gigantic as Elephants are found in different territories of the Union of India. Since times immemorial, people have a close link with animals in their day to day activities. Animals are being used as a source to satisfy hunger such as cows and goats, also as a source of recreation as in the case of hunting and sports activities like bull fights, horse race etc. They are also used as a means of transport and for lifting weights like ox, camels and donkeys. Looking at these aspects, it can be said that animals forms an inseparable part of man’s life.

The unique location of India provides it with all three kinds of Climate ie Temperate, Tropical and Equatorial. Hence, there exists a wide variety of flora ranging from medicinal plants to beautiful flowers. Since Vedic era, medicinal plants are being used as a remedy to cure various diseases and also as a major cosmetic ingredient. Even during Mughal Empire, some trees were considered as a sign of Royal patronage and cutting them was forbidden. Also, they built many gardens and encouraged planting of trees. Plants have therefore been considered as an epitome of beauty.

Both flora and Fauna together forms the part of ecosystem and are complimentary to each other. If one form of life is disrupted, it endangers the other form of life. This could be

explained well with an example. Deer eats plants and lion eats deer so if the plants get extinct, deer will die and hence there will be no prey left for lions as well. Thus, even if one state of ecology is tampered, the other automatically gets affected.

Wildlife trade is any sale or exchange of wild animal and plant resources by people. This can involve live animals and plants or a diverse range of products needed or prized by humans—including skins, medicinal ingredients, tourist curios, timber, fish and other food products.¹

Wildlife trafficking is one of the biggest threats to wildlife conservation. It has now become the 6th most organized crimes in the world. The rampant poaching in wild life and its products are primarily driven by demands in the international market.² The plants and animal species are exploited majorly for financial gains especially in countries with poor economic background. There exists a conflict regarding the free trade of wild species. Some people believe that trading in wildlife is the primary reason for environmental degradation while others believe that trade in wildlife is due to necessity as in the case of poverty. There is no major market for wildlife products in India except for minor use. These products have a major demand in the international market. All over the world, the commercial activities related to wildlife are classified into- Trade for food, trade for medicines, trade for derivatives, trade for pets or private collections, trade for artifacts, trade for souvenirs, Trade for zoo, gardens and museums.³ With significant profit margins to be made, the illegal trade in wildlife is flourishing, and even the so-called legal wildlife trade is rife with corruption, and blatant disregard for both international and national laws.⁴

The Wildlife protection Act, 1972 is the primary legislation that deals with wildlife protection in India. It is based on ecosystem approach and provides a regulatory framework to wildlife protection⁵. The major objectives of this Act are –

¹ <http://www.biodiversitya-z.org/content/wildlife-trade> (last accessed on 30 august, 2018)

² Bhat sairam, Overview of the legal regime relating to conservation of wildlife in India, CEERA, National Law School of India University, Bangalore, available at: www.nlsenlaw.org (Accessed on Aug 20th, 2018)

³ Shanthakumar, introduction to Environmental law, Wadhwa & co. 2nd edition, 2005, 281

⁴ www.awionline.org/ht/d/sp (Accessed on August 30th, 2018)

⁵ Upadhyay Sanjay and Upadhyay Videh, Forest Laws, Wildlife laws and the Environment, p-243 (LexisNexis Butterworths, Vol I, Ed 2002)

- To have a uniform legislation on wildlife throughout the country,
- To establish a network of protected area i.e. national parks and sanctuaries and
- To regulate illicit trade in wildlife and its products

India is also a signatory to The Convention on International Trade in Endangered Species of Flora and Fauna (CITES). This Convention protects the species by regulating their trade. It focuses on two issues - Indian and Global approaches to wildlife conservation and the statutory framework in India regarding the wildlife protection.⁶

FORMS OF WILDLIFE TRADE

India is a heartland of poaching of all kinds of wild animals. Every animal is a victim of trafficking from frogs to rarest of mammals. The wildlife trade is now become a globalised business. In such a business set up, the developing or the under developed countries supply wildlife and their products while the developed countries consume these products. A handsome amount of money is earned against such wildlife trade. The poaching of elephants for ivory trade is also on the increase and ivory is traded in a raw and unfurnished form either cut pieces or whole tusks or in decorative pieces.⁷ In Northeast India, there is an evidence of a strong connection between the insurgent groups, drugs and arms traders with the illegal traders in Rhino horns.⁸ According to the same author, Rhino poaching is still carried out throughout the world by sophisticated poachers who use cross bows, poisons, drugs and high caliber weapons to kill Rhinos. In India, according to a survey report, around 2,00,000 birds are poached every year. Rampant poaching is the main cause for vanishing of birds from India and the population of the Great Indian Bustard and Flamingo are dwindling due to poaching.⁹ Sloth bears are also used for entertainment purposes like for performance on the streets. People indulged in such activities earn a lot

⁶ Majumdar B. Arjya, Environment and wildlife laws in India, lexis nexis, 115

⁷ Gandhi, Maneka, Wild Animal Protection laws in india, lexis nexis, 43

⁸ Shanthakumar, Introduction to Environmental law, Wadhwa and co. Nagpur, 2nd edition, 2008, pg. 282

⁹ The times of India (Ranchi Edition), Rampant Poaching and Habitat loss make birds vanish from country, 18 Nov, 2014

of income through such performances. These bears were also used by Mughals and harsh methods of training was used to control them.

The population of Whales also started declining because human beings started exploited them in huge numbers. The oil obtained from a Sperm Whale is till date the best lubricant for automatic gearboxes in cars and other minor products include ambergris, which is used in the perfume industry.¹⁰ Seals were mainly slaughtered for their skin. However, this reduced when seals became an extinct species of nature. Expensive coats, hats and gloves are also made out of the skins of spotted and stripped cats such as leopards, Cheetah and Tigers. Tiger Skin is still considered as a royal patronage. Small animals like sheep and beavers are traded for fur.

Hunting is another reason that has wiped out India's lions, tigers and Cheetah. In the Ancient times, Hunting was in practice for trophy but during the Roman Period, it became the activity of the influential and wealthy classes. It was an epitome of pride. Animals were also hunted for sports. Lions, tigers, deers and giraffes were shot for fun and their bodies were bought home as trophies. The kingly sport of falconry was developed by the Mongol Emperor, like Kublai Khan and Genghis Khan and the Indian Emperor Shah Jahan was a champion in falconry in India.¹¹ Such Rampant hunting had an adverse impact on the wildlife of India.

CONSTITUTIONAL PERSPECTIVE

Article 19 (1) (g) of the Constitution of India enshrines the freedom of Trade, Occupation and Business. However, this is not an absolute right and is subject to reasonable restrictions. In the case of *N.R. Nair v. Union of India*, the Kerala High Court considered the question of extending the Fundamental Rights to Animals and emphasized that legal rights should not be “the exclusive preserve of humans which has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side”¹²

¹⁰ Gandhi, Maneka, *Wild Animal Protection laws in india*, lexis nexis, 44

¹¹ Dharma kumar Sinhji, RS, *Reminiscences of Indian Wildlife*, oxford University Press, 24 Feb 2000, 23, 41 and 53

¹² *NR Niar v. Union Of India AIR 2000 ker 240*

The Constitution has also given directions to the state for the protection of ecology and natural resources and also imposes fundamental duties to the citizen to maintain ecological balance of nature for the protection of forest and wildlife. So there is a conflict between the status of wildlife on one side and the right to trade which is affecting wild resources on the other side. But the judiciary has given tremendous preferences to the right to environment and ecological balance over the constitutional and legal rights in maximum cases. Any trade or business which is offensive of flora and fauna cannot be carried in the light of Fundamental rights as guaranteed under the Constitution of India.¹³ The penalties for various offences were proposed to be suitably enhanced to make it deterrent to Wildlife Crimes.¹⁴

In the case of *MC Mehta v. Kamalnath*¹⁵, the Supreme Court held that any interference in the basic element of the Environment in the name of trade and business will not be permitted whatsoever. Any occupation, at the cost of public health, cannot be allowed to make profits. Anything that is dangerous cannot be allowed to be traded under right to trade.

Animals and Humans form the part of the same ecosystem. They have a close link to each other. Disrupting one form of life would endanger the other form of life and hence it is violative of Article 21 of the Constitution that lays down Right to life. No one can be given the privilege to hamper any form of life. Basically, it is extremely essential for the survival of man to co-exist with nature, and to preserve and protect wildlife.¹⁶

In the landmark case of *Ivory Traders and Manufacturers Association v. Union of India*¹⁷

- No citizen has a fundamental right to trade in ivory or ivory articles, whether indigenous or imported.
- Assuming trade in ivory to be a Fundamental Right granted under art. 19(1) (g), the prohibition imposed therein by the impugned Act is in public interest, and in consonance with the moral claims embodied in Art 48A of the constitution; and

¹³ Arora, Tarun, Nyaya Deep, a study of Judicial Behavior continuing social engineering in India with special reference to Environmental protection, Vol no. 8, Oct 2007, pg 108

¹⁴ *Ivory Traders and Manufacturers Association v. Union of India*, AIR 1997 Delhi 267

¹⁵ AIR 2002 SC 1997

¹⁶ P Leelakrishnan, Environmental Law Case Book, (Lexis Nexis Butterworths, 2nd Ed 2004)

¹⁷ AIR 1997 Del 267

- The ban on trade in imported ivory and articles made there from is not violative of Art 14 of the constitution, and does not suffer from any of the maladies, namely, unreasonableness, unfairness and arbitrariness.¹⁸

Also, Article 48A of the constitution, which is a directive principle of state policy, states that it is the duty of the state to protect and conserve our forests, wildlife and Environment while Article 51A (g) imposes a similar duty on the citizens to protect and conserve Wildlife of the country and to have compassion for living creatures.

LACUNAE IN THE WILDLIFE LAW IN INDIA

India is a home to about 60-70% of World's Biodiversity.¹⁹ The primary legislation that protects Wildlife in India is the Wildlife protection Act, 1972. One of the major objectives of this Act is to regulate the illicit trade of animals in India. It also lays down offences and penalties for those engaged in Wildlife Crimes.

However, this legislation has a lot of lacunae that needs to be addressed. The international trade in species is not reflected in the Wildlife Protection Act, 1972. It mainly focuses on the indigenous species and there is no provision for species that may be trafficked through India. Wildlife trade continues to flourish unabated due to the corruption in official machinery and poor enforcement of Wildlife laws. Consequently, the international wildlife trade has evolved into a serious conservation menace and has been a concern that was addressed by the United Nations' Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES).²⁰

The CITES lists various Appendix I of species starting from the most endangered in Appendix I moving into the species of lesser concern in Appendix III.²¹ The Species mentioned in these Appendices cannot be traded internationally. The Wildlife Protection Act, 1972 however makes no provisions to prohibit the trade of these species domestically. There exists no

¹⁸ Supra 10

¹⁹ Explorations in Applied Geography By Dutt Misra & Chatterjee (eds.) , L R Singh, Ashok K Dutt, H N Misra, Meera Chatterjee

²⁰ CITES objectives, [cites.org: http://www.cites.org/eng/disc/what.php](http://www.cites.org/eng/disc/what.php)

²¹ Appendices I, II and III, [cites.org: http://www.cites.org/eng/app/appendices.php](http://www.cites.org/eng/app/appendices.php)

domestic legislation that imposes punitive measures for the trade in these species domestically or specifically lists these species.

India contains 172, or 2.9%, of IUCN-designated threatened species.²² The Wildlife Protection Act, 1972 however, does not take into account this Red List of Species. It does not protect the species that falls within the IUCN list. A series of Regional Red Lists are produced by countries or organizations, which assess the risk of extinction to species.²³ The Wildlife Protection Act does not take any special cognizance of these lists. With the Wildlife Protection Act adopting this myopic approach to conservation of species that are migratory or trafficked animals in transit, India has become a global hotspot for the trade in wildlife.²⁴

Along with the CITES Appendices, there is the International Union for the Conservation of Nature (IUCN) which is arguably the world's most comprehensive inventory of the global conservation status of biological species and the Red List of Threatened Species which lists the species that are faced with the highest threat of extinction.²⁵

India is also a member of CITES working group on livelihoods, however, the implementation of the said convention is poor due to the lack of punitive measures and deterrent punishment envisaged in the Wildlife Protection Act. The CITES management authority of India, which is the Director of Wildlife Preservation, Government of India, does not have a dedicated CITES Cell in his office to follow up the submissions made by the country in CITES Conferences of the Parties (CoP's) and the Standing Committee and to properly attend to various communications that comes from CITES Secretariat to this Ministry.²⁶ The obligations made under CITES and IUCN are not binding and it is left on the discretion of Domestic bodies.

The Wildlife Protection Act does not cover migratory species which are of major concern. The Act only covers indigenous species and some migratory species. These species are often labeled as a foreign species for which the Act makes no provision. Migratory species migrate

²² Groombridge, B. (1993 Edition) *The 1994 IUCN Red List of Threatened Animals*. IUCN, Gland, Switzerland and Cambridge, UK. Pg.286

²³ IUCN (2003) *Guidelines for Application of IUCN Red List Criteria at Regional Levels: IUCN Species Survival Commission*. IUCN, Gland, Switzerland and Cambridge, UK:
http://intranet.iucn.org/webfiles/doc/SSC/SSCwebsite/Red_List/regionalguidelinesEn.pdf

²⁴ India Environment Portal, <http://www.indiaenvironmentportal.org.in/reports-documents/disappearing-act-illicit-trade-wildlife-Asia>

²⁵ IUCN Red List Overview [2] <http://www.iucnredlist.org/about/red-list-overview#introduction>

²⁶ CITES Report S.C. Dey, *Global Tiger Forum*, New Delhi (Chapter 10)
<http://www.mse.ac.in/Trade/pdf/Compendium%20Part%20B/3.%20SCDey-CITES.pdf>

to India for a considerable period of time and are trafficked through India. The Act does not protect such species. People indulged in such trade are left unpunished because it falls outside the purview of this Act. The inadequacy of border control mechanism to check wildlife trafficking has also provided impetus to poachers to use the Indo-Chinese border to directly supply tiger parts from the source country to the consumers in China.²⁷ The lack of implementation of the provisions of the Wildlife Protection Act along with transnational trade regulations and the collective incongruence with international conventions has led to India becoming a preferred trade route for illegal ivory.

The Wildlife protection Act does not extend to Jammu and Kashmir which is a major hotspot of Wildlife trafficking through India. Jammu and Kashmir is a host to a diverse range of endemic species; however these are not covered by the state Act.²⁸

A commonly exploited loophole in the Wildlife Protection Act is the provision for self defense, which is often abused and can easily be claimed whilst hunting wildlife.²⁹ Section 11(2) of the Wildlife Protection Act, 1972 states that “The killing or wounding in good faith of any wild animal in defense of oneself or any other person shall not be an offence”. This is misused by many forest dwellers to kill and injure animals with rudimentary weapons and claim self defense and get away with it. Along these lines the endeavors of careful forest guards are regularly vanquished in court when the supplication of self defense is maintained basically as a result of the undeniable absence of unconquerable proof that they were hunting the animal. The motivation for slaughtering an animal should be totally dispensed with in the instances of executing natural life for self defense so the situations where animals are hunted and self defense is asserted can be curbed.

Lastly there is a conflict between the legislative intent of the Wildlife Protection Act and The Forest Rights Act 2006 which grants some of India's most impoverished communities the right to own and live in the forests, which likely brings them into conflict with wildlife and under-resourced, under-trained, ill-equipped forest department staff.³⁰ In the past, evidence showed

²⁷ International Fund for Animal Welfare Report

<http://www.ifaw.org/sites/default/files/Fact%20Sheet%20Tiger%20Trade%20Fact%20&%20Fallacies.pdf>

²⁸ Perspectives In Environmental Studies By Anubha Kaushik Pg. 204

²⁹ Outlook India Article: <http://www.outlookindia.com/article.aspx?227749>

³⁰ Buncombe, A. (2007) The face of a doomed species. The Independent, 31 October 2007

that humans and tigers cannot co-exist, giving rise to further conflicts and claims of self defense in tiger killings.

CONCLUSION

As already discussed, Wildlife is of utmost importance for the proper functioning of ecological system and to balance interaction between human beings and environment. Hence, it is the need of the hour that Wildlife laws are given priority as other laws. Even the concept of inter generational Equity states that it is the duty of the whole human society to pass on the Environment in the same manner and condition to the future generations as received from their ancestors. Through this paper, the researcher wants to conclude by saying that there should be a proper review and discussion of the already existing legislations. The observed lacunae which are mentioned above should be taken into consideration while making amendments in the legislation. There should also be strict implementation of the laws. Offenders must be given deterrent punishment so that they realize the gravity of their offence.

There is always a chance of conflict arising between the economic development of the country and sustainable development of the environment. Thus, we as a society should maintain a balance between both these aspects and conserve wildlife by appropriate execution of laws and by monitoring of the measures envisaged for wildlife protection.

“It’s not whether animals will survive; it’s whether man has the will to save them”